Decision **DRAFT ALTERNATE PROPOSED DECISION OF COMR. PEEVEY**
(Mailed 8/12/02)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development.	Rulemaking 01-10-024 (Filed October 25, 2001)

TABLE OF CONTENTS

Title **Page**

INTERIM OPINION

I. Summary

The question before the Commission in this interim decision is the extent to which, if at all, the respondent utilities should be permitted to immediately contract for a portion of their residual net short (RNS) in partnership with the California Department of Water Resources (DWR).[1]

In this decision, we authorize the respondent utilities to enter contracts in participation with DWR between the effective date of this decision and January 1, 2003. In this decision, we address the very limited motion of Southern California Edison Company (Edison) dated May 6, 2002.[2]

We adopt a procedural process to review and approve these contracts. This process provides the utilities with an opportunity for an expedited Resolution that resolves reasonableness issues, while ensuring effective Commission oversight.

We also address the procurement of renewables in this transition period by setting aside a portion of procurement to come from renewable sources.

Finally, we require the utilities to procure QF power during the transition period until implementation of their final procurement plans as approved by the Commission in a later phase of this proceeding.

---

[1] The residual net short is the amount of energy needed to serve a utilities' customers net of existing resources, including those supplied by DWR.

[2] This is not the decision in which full and detailed procurement plans will be authorized, nor is it the forum in which the requirements of Assembly Bill (AB) 57 – which is not yet law, although it has been unanimously approved by the state legislature – will be met. The task before us now is deliberately measured, as it must be if we are to meet the mounting demands of the calendar.

On October 29, 2001, the Commission issued an Order Instituting Rulemaking (OIR), designated as Rulemaking (R.) 01-10-024, to

(1) establish ratemaking mechanisms to enable California's three major investor-owned electric utilities, Southern California Edison Company (Edison), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E) to resume purchasing electric energy, capacity, ancillary services and related hedging instruments to fulfill their obligation to serve and meet the needs of their customers, and

(2) consider proposals on how the Commission should comply with Public Utilities Code Section 701.3 (Section 701.3) which requires that renewable resources be included in the mix of new generation facilities serving the state.

A preliminary scoping memo contained in the OIR set a schedule for respondent utilities to file procurement proposals and for interested parties to comment on the proposals, and scheduled a prehearing conference for January 8, 2002. SDG&E and PG&E filed their proposals on November 21, 2001 and Edison late-filed its proposal on November 27, 2001. Interested parties requested and were granted a one-week extension until December 21, 2001 to file comments. In their comments, many parties urged the Commission to develop a fully integrated resource planning process but to only decide quickly those issues that need to be in place for the utilities to resume full procurement responsibilities no later than January 1, 2003, as anticipated by Assembly Bill ABX1 1 (Keely).

The procedural schedule and scope for the initial proceeding was adopted in the April 2, 2002 Assigned Commissioner Ruling Establishing Category and Providing Scoping Memo (April 2 Scoping Memo). The ruling explicitly emphasizes interim procurement methods for the immediate issue of restoring the utilities' obligation to serve and meet the needs of their customers no later than January 1, 2003. The ruling requested briefs on transition issues that needed to be resolved and set a schedule for the respondent utilities to file procurement plans for 2003 with accompanying testimony. The April 2nd Scoping Memo schedule anticipates a proposed decision in September, with a final Commission decision in October 2002. The only consideration of procurement practices post-2003 was for procurement of renewable resources to address our mandate under California Public Utilities Code Section 701.3 (Section 701.3).

The respondent utilities served their testimony on May 1, 2002. As part of this testimony, Edison proposed the Commission adopt a process by which it could immediately begin contracting for up to a five-year term for capacity and related products in conjunction with the DWR. On May 6, 2002, Edison filed a motion requesting that this proposal be approved on an expedited basis outside of the hearing process. By ruling on May 15, 2002, the scope of this initial phase was expanded to consider Edison's May 6th proposal in the hearing process.

Evidentiary hearings were held from June 10 through July 3, 2002. A bifurcated briefing schedule was set, with briefs on transitional procurement issues, to include Edison's May 6th Motion and how the Commission should address renewable energy procurement and QFs under any authority granted, due first on July 12, 2002. These issues are the subject of this interim opinion.[3]

---

3 Parties who participated actively in the proceeding are the respondent utilities, Aglet Consumer Alliance (Aglet), Alliance for Retail Energy Markets and the Western Power Trading Forum (ArM/WPTF), California Biomass Energy Alliance (CBEA), California Cogeneration Council (CCC), California Consumer Power and Conservation Financing Authority (California Power Authority), California Energy Commission (CEC), California Wind Energy Association (CalWEA), Center for Energy Efficiency and Renewable Technologies (CEERT), Cogeneration Association of California (CAC),

Footnote continued on next page

II. Edison's May 6th Motion

A. Request

Edison's "Motion for an Interim Decision Granting Approval of Process for Early Procurement of Capacity" (Edison May 6th Motion) requests that the Commission issue an interim decision prior to June 15, 2002, that authorizes Edison to enter into multi-year capacity contracts using the credit of the DWR until Edison regains its investment grade rating. Edison claims that this approach would help bridge the gap to the procurement that it would conduct under a Commission approved procurement plan that is currently before the Commission for review. Edison contends that such authorization would allow it to begin procuring power prior to the Commission completing its review of the procurement plan and prior to Edison regaining an investment grade capacity rating.

Under this requested authority, Edison anticipates procuring capacity products that are dispatchable, together with related fuel and electric transmission where appropriate, to meet its anticipated need, defined as its RNS, in super-peak periods. Edison asserts that entering capacity contracts for up to five years in duration would be beneficial for Edison's customers because it would allow Edison to be less dependent on the volatile spot market for power purchases.

Consumers Union (CU), Independent Energy Producers Association / Western Power Trading Forum (IEP / WPTF), Office of Ratepayer Advocates (ORA), Ridgewood Olinda, LLC (Ridgewood), Sempra Energy Resources (SER), The Utility Reform Network (TURN), and Union of Concerned Scientists (UCS).

Edison states that each contract would be submitted to the Commission by advice letter for approval within 30 days of its execution. Edison's proposal would require the Commission 's Energy Division to approve the contract within 30 days, unless it provides specific reasons why the contract is not in the best interest of Edison's ratepayers.

On May 15, 2002, the assigned Commissioner and Administrative Law Judge (ALJ) issued a ruling (May 15th Ruling) finding that the authority sought by Edison should not be considered outside of the full factual and evidentiary record being developed in this proceeding. The ruling provided a short extension to the procedural schedule to accommodate consideration of the motion in an expedited manner and required Edison, and any other utility interested in similar authority, to serve the additional testimony necessary for us to consider this request. Prior to Edison's motion, the scope of the procurement plans before us were limited to consideration of 2003 needs. As stated in the May 15th Ruling, the critical part of the evidentiary record needed to evaluate Edison's proposal was a reliable forecast of its residual net short requirements for 2003 through 2008. Edison and the other respondent utilities had previously stated that they could not provide this forecast until there was resolution of issues related to the allocation of DWR contract power and ongoing coordination of DWR and utility supply activities; therefore, the ruling set forth a process for parties to meet and confer in order to develop a proposal to resolve these issues.

The utilities were not able to timely resolve the DWR allocation issues identified as critical in the May 15th Ruling. Instead, in its May 24, 2002 supplemental testimony, Edison stated that the uncertainty regarding the effects of DWR contract allocation on its forecasted peak day shortages should be addressed by limiting the amount of megawatts (MWs) authorized under the motion.

On May 31, 2002, DWR wrote the Commission and parties a memo outlining its position on Edison's motion. This memo, received into evidence as Exhibit 131, states that DWR requires the following conditions for the proposed authorization to be consistent with its authority under AB1X:

1. DWR retains title to all power purchased by DWR.

2. DWR's costs for interim payment under the contracts are recovered through DWR's revenue requirement and are directly reimbursed by Edison's customers in the same manner as other net short purchases by DWR at present.

3. DWR and Edison would be signatories to any contract, providing for DWR to be removed from the contract upon Edison becoming creditworthy and assuming full responsibility for payment for energy under the contract(s) thereafter.

In addition, DWR states that the Commission should be aware if there are any contracts for energy payments which vary with the market price of fuel (presumably natural gas) or other market indices, such contracts could contribute to added volatility in DWR's payment obligations, thereby affecting the reserve fund balances and associated bond issue size. DWR further states that, to ensure the stability of rates, it is critical that the Commission adopt a contract allocation and resource dispatch policy as a part of its ruling on Edison's motion.

In its July 12, 2002 brief, Edison renews its request, with some modifications, under the Joint Principles for Interim Procurement dated July 12, 2002 (Joint Principles) it signed with CU, PG&E, and TURN. The Joint Principles proposes establishment of a Procurement Review Group whose members, subject to an appropriate non-disclosure agreement, would review and assess the details of Edison's overall interim procurement strategy and specific proposed procurement contracts and proposed procurement processes prior to Edison submitting filings to the Commission. Commission staff would be ex officio members of the group. Both renewable and non-renewable suppliers would be eligible to supply the capacity needs of Edison, with no accelerated or special consideration given to renewables or, more broadly, to QFs. The procedural process set forth in the Joint Principles requires the Commission to issue a resolution within 30 days of an advice letter filing. The Joint Principles state that this authorization should be granted no later than the end of July 2002.

Interested parties to the proceeding generally support a more limited transitional authority than that requested by the respondent utilities. Ridgewood and Aglet recommend the request be denied. Ridgewood claims that granting Edison's motion would prevent companies from developing new renewable resources in the state and cause many existing renewable facilities to shut down. Aglet states that the Commission should deny Edison's motion because the risks of unanticipated long-term consequences of hasty contract approval outweigh the benefits of current market opportunities. In the alternative, Aglet states that the Commission should impose restrictions of the type recommended by CEC. Examples of such limitations are a cap on on-peak capacity procured under Edison's motion, and dispatchability requirements. The recommendations of other parties on the amount and type of products will be discussed in a following section.

B. Applicability to PG&E and SDG&E

PG&E and SDG&E request similar authority to that requested by Edison, and also request that any interim procurement authority the Commission provides to one utility be extended simultaneously to all three utilities, to ensure fair and equitable opportunities for all California utilities to acquire reliable and reasonably-priced capacity for all their customers.[4]

SDG&E currently has an investment grade credit rating, and, therefore, a question exists as to whether the credit support of DWR should be provided, and if so, when SDG&E should assume financial and legal responsibility for the contracts from DWR. Edison and PG&E propose SDG&E assume this responsibility at the same time that either Edison or PG&E achieves an investment grade credit rating, whichever is earlier. SDG&E differs, requesting that it not assume full responsibility for the DWR contracts until both Edison and PG&E have achieved an investment grade credit rating.

SDG&E states that although it is creditworthy, its procurement needs are a small part of the market and it represents that the market does not distinguish between a creditworthy SDG&E and a non-creditworthy SDG&E because of the spillover effects stemming from PG&E and Edison. However, we note that SDG&E is distinguishable, for example SDG&E may fully participate in the CAISO market. Also, other creditworthy utilities operating in California such as PacifiCorp are able to procure for their customers, despite the financial situation of Edison and PG&E.

We are not persuaded that there is a need for DWR to "backstop" purchases for SDG&E. The purpose of DWR's involvement is to use the state's credit to assist the utilities, if necessary, and the state should not continue this

---

4 PG&E requests it also be granted authority for gas hedging under this motion, similar to the authority that Edison already has. PG&E also requests a different percentage of its RNS be authorized. These two issues will be addressed in Section D below.

relationship beyond its intended purpose. Therefore, we propose that SDG&E execute any contracts resulting from the authority granted today without DWR involvement. However, we will afford SDG&E other aspects of Edison's proposal, such as an expedited review process.

C. Should DWR Contract Allocation Be Completed First?

The May 15th Ruling stated that the DWR contract allocation should be completed in order for the Commission to have an accurate forecast of each utility's RNS and set forth an expedited procedural schedule to accomplish this. In their supplemental testimony, the utilities stated that they could not complete this task in the time allowed and proposed that the Commission use a percentage of a conservative estimate of the RNS to compensate for the range of uncertainty. At the end of hearing, the ALJ asked parties to brief this issue.

The utilities continue to argue that transitional procurement can be authorized prior to allocating the DWR contracts by using a percentage of a conservative RNS estimate. ORA, CEC, and several renewable parties are more cautious, their concern being that the utilities may foreclose the opportunities to purchase renewable power by signing long-term non-renewable capacity contracts prior to January 1, 2003. These parties recommend that the amount of power authorized under the requested transitional authority be less than requested by the utilities, and that less of the authorized amount be available for long-term contracts.

We share the concern that the utilities not over-procure in the transition period, especially for five-year contracts that could have the effect of shutting out new renewable generation or demand reduction options. We will consider Edison's May 6th motion here, but only in a manner that will not foreclose renewable generation in the final procurement plan. The specifics of this will be discussed in the following section.

D. What Types of Products Should Be Authorized and in What Amounts?

1. Parties' Positions

Most active parties in the proceeding were not permitted to review the underlying data submitted by the utilities because they did not meet the strict standard of "non-market participant" set forth in our May 1, 2002 Protective Order. And as market participants themselves, the respondent utilities did not have access to each others' confidential material. With many parties unable to review the evidence, we need to be very cautious in assuring that the underlying forecasts of RNS and the assumptions they are based on, have been vigorously examined, tested, and verified. We give particular weight to the testimony of ORA, CEC, Aglet, and TURN because they are parties with full access to the evidence and possess the technical expertise to understand and assess it.

We are particularly mindful of the needs of parties representing renewable resources because they do not have access to the confidential evidence. The renewable resources parties express strong concerns that the authority we authorize here does not foreclose, or in any way harm, the utilities' ability to meet their potential obligation under AB 57 to increase the amount of eligible renewables presently in their portfolio by 1% annually, beginning in 2003. The authorization for renewable resources is necessarily different and is discussed below.

The specific amount each respondent utility is requesting is a confidential number, based on a percentage of a conservative forecast of its RNS energy needs in 2003 through 2007.[5]

The utilities assert that if multi-year dispatchable capacity or forward energy hedges can be purchased in these amounts at favorable prices, they will be far superior to reliance on short-term transactions in protecting electricity customers from the risks of volatile power prices. Edison states that it would be inappropriate for the Commission to specify precisely the types of contracts which it and DWR can jointly enter because the utilities will have less than six months to negotiate and gain all approvals of complex contracts before DWR's authority to contract expires. That time period has now shortened to only a little more than four months.

Edison proposes that each contract be "either a capacity contract, an energy contract, an energy exchange contract, or a financial transaction that provides a hedge similar to that provided by any of the above types of contracts." (Ex. 119, Appendix A.) PG&E and SDG&E request they be granted the same terms and conditions as those approved for Edison. In addition, PG&E requests it be granted explicit approval to enter gas hedge contracts, an authority that Edison now has under the terms of its settlement agreement with the Commission.

---

[5] The confidential number for Edison is found in Exhibit 5C, page 11-6, for PG&E in Exhibit 48C, Table S-2, and for SDG&E in Exhibit 64C, page 5.

2. Discussion

a) Establishing a Procurement Limit

On May 24, 2002, PG&E, Edison, and SDG&E filed supplemental testimony providing capacity limits to be used under an interim procurement framework. Edison and SDG&E's testimony explicitly states that the capacity limits are based on low-case RNS scenarios (e.g., assuming low load, high direct access, and high allocation of DWR contracts) to produce conservatively low estimated procurement limits. The purpose in proposing a conservatively low limit for interim procurement is to establish a limit such that even though DWR contracts have yet to be allocated, the utilities will not over commit their RNS once contract allocation is resolved. PG&E's supplemental testimony does not explicitly acknowledge that its proposed procurement limit is based on a modeling scenario aimed at producing a conservatively low estimated capacity limit for purposes of interim procurement.

Numerous parties raise concerns with respect to the amount of the procurement limits proposed by the utilities. CEC comments that Edison's proposed interim procurement limit is too high and would obviate the need for procurement under Phase 2 of this proceeding as the level of capacity contracting requested would essentially cover all of Edison's RNS. CEC urges us to authorize the utilities to procure for a more limited quantity of resources, between one-fourth and one-third of their respective on-peak RNS requirements. Aglet also supports more restrictive limits. ORA indicates that its examination of Edison's residual net short requirement shows that if interim procurement is allowed, "only a relatively small number of on-peak hours in the reference case

RNS and a limited number on peak hours for the high-case RNS for 2003 and 2004 are projected to have RNS greater [than] SCE's proposed limit."[6] ORA advises that we consider the actual number of hours that would remain uncovered as the Commission decides the merits of Edison's Motion. SDG&E also cautions that the amount of power to be procured on an interim basis should be conservative in order to allow additional procurement to be guided by the Commission's final decision adopting the utilities' final procurement plans.

CEC also points out that Edison's estimates of its RNS energy requirement are highly sensitive to how the DWR contracts are allocated among the three utilities as well as to the outcome of the state's contract renegotiations efforts. Given that final allocation remains undecided and that contracts are subject to ongoing renegotiation, utility RNS estimates are "uncertain and speculative."[7]

Energy Division is in possession of the utilities' confidential data supporting their respective requests for capacity limits. A basic assessment of the supporting data shows that if the utilities are authorized to procure up to their conservatively estimated capacity limit (capacity without ancillary service capability), the number of hours that Edison is still short is reduced from roughly 45% of the total number of hours in 2003 to about 13%. For SDG&E, the decrease is more modest, dropping from 38% of total hours in 2003 to about 28%. Unlike Edison and SDG&E, PG&E did not explicitly make a showing in its Supplemental Testimony that its requested capacity limit for interim

---

[6] ORA Brief. p. 4.

[7] CEC Brief, p. 4.

procurement is based on a methodology aimed at producing a conservatively low estimate for interim procurement. (See Exhibit 48C.) Edison and SDG&E present an alternative capacity limit that includes self-provision of ancillary services. Energy Division's review of the proposed capacity limits with ancillary services capability shows that the number of hours left uncovered in 2003 (i.e., the remaining RNS) drops to about 7% of total hours for Edison and 11% for SDG&E.

For transitional procurement authority, we adopt a capacity limit for each utility that reflects a cautious approach. First, we adjust PG&E's proposed capacity limit to reflect a comparable methodology to Edison's and SDG&E's conservative low RNS forecast. We do this by removing from total load adjustments the amounts PG&E shows for ancillary services and planning reserves. With this revision, we authorize Edison, PG&E, and SDG&E to procure up to 65% of their forecasted on-peak hourly RNS requirement reflected in a low-case RNS scenario for products with a contract duration up to one year and without self-provision of ancillary services included.

We find that the on-peak hourly RNS requirement based on a low-case RNS forecast allows the utilities to procure on a transitional basis, but also does not commit all RNS requirements. In addition, this approach allows for the final procurement plan to consider changes in the RNS requirements.

Our adopted figure is intended to not foreclose opportunities for the utilities to procure additional power under the 2003 utility procurement plans pending with the Commission, but also to be of a sufficient amount to generate robust interest in the supplier community. In their applications for pre-approval of products, the utilities shall demonstrate that the low case RNS scenario is adhered to.

Edison's May 6th Motion also requests authority to procure contracts with terms up to five years. Edison asserts that multi-year procurement authority is needed because:

> "…the availability in the marketplace of capacity contracts for a one-year term is highly unlikely and, to the extent they are available at all, SCE believes they will not provide a reasonable cost to our customers. Capacity contracts are more complex than other contracts and may require the seller to make a significant investment in generation to provide the service."[8]

Edison adds that:

> "Mutli-year capacity contracts may also be used, if approved by the Commission, to firm up investment in new generation which can help meet customer demand that currently must rely on the uncertain spot market. The contracts may help to assure that capacity additions that are now being differed, or at risk of being differed, will actually be completed when needed."[9]

In supplemental testimony filed by the utilities, each utility proposes a procurement limit that reflects a significantly increasing amount of power annually between 2004 and 2007.

Several parties object to Edison's request for multi-year contracting authority. ORA argues against multi-year procurement citing: (i) uncertainty associated with wholesale market redesign issues; (ii) the fact that

---

[8] Exhibit 5C, p. I-9.

[9] *Id.* p. I-10.

the utilities' procurement plans are pending at the Commission; (iii) the Commission possesses limited time and resources to review such contracts; and (iv) multi-year contracts with suppliers that do not have generation installed to meet 2003 needs will not satisfy near-term capacity needs of the utilities. CEC recommends that multi-year capacity products be limited to "a safe quantity assured to be required."[10] CEC comments that the substantive benefit provided through multi-year contracts is the revenue assurance it provides to a new generator. Like ORA, CEC points out that it takes about two years for a new generating facility to come on-line following commitments; therefore ratepayers won't receive the "majority of the benefits"[11] of such a contract in the near-term.

SDG&E proposes what it calls a "50/50 rule" for multi-year contracting whereby half of the total amount of capacity that is authorized for procurement under interim procurement be contracted for a term of up to five years. The remaining half could be contracted for a term not to exceed one year.[12] SDG&E witness Resley provided context for this proposal during evidentiary hearing:

> "…this [50/50 proposal] derives from our concern about making too many commitment too soon for too long. We've learned some things in the past few years, and we have learned that some hedging, some time between commitments, some ability to see how things

---

[10] CEC Brief, p. 5.

[11] *Id.*

[12] SDG&E Brief, p. 11.

> evolve is better than putting all your bets on a single outcome at a single time."[13]

We find merit in authorizing multi-year procurement. The prospect of signing multi-year procurement contracts will help attract suppliers to utility solicitations and will help attract capital investment in new generating projects. On the one hand, we acknowledge the uncertainty that exists surrounding final allocation of DWR contracts and the uncertain net effects of DWR contract renegotiation on the aggregate size and shape of DWR's supply portfolio over the next five years, as well as the concerns voiced by ORA and SDGE. On the other hand, we take note of the fact that any unnecessary restrictions we impose on the utilities may spancel them now in their efforts to avoid high spot market prices during critical periods. Moreover, it would be difficult practically to create an interim procurement portfolio with a 50% limit on contracts with a term longer than one year. It would be an unintended result if a utility were able to negotiate an extremely favorable contract, only to terminate discussions because it penetrated the 50% limit by only a few percentage points. Micro-management of the interim procurement guidelines is not in the best interest of the ratepayers. Authorizing procurement up to the levels requested by the utilities is appropriate at this time. This limit will ensure that a significant remainder of procurement requirements will be guided by future Commission decisions and re-examination of utility RNS positions and market conditions.

[13] Tr. Vol. 10, June 21, 2002, pp. 1222-1223.

b) Product Types

Edison proposes to enter into contracts for "dispatchable capacity, and for related fuel and transmission, where appropriate, of up to five years in length."[14] Edison also seeks to secure natural gas hedging in support of the capacity contracts negotiated through interim procurement. PG&E states that it needs the same types of procurement products described by Edison, but also requests authorization to purchase natural gas hedges to hedge the fuel price of its fossil-fuel Utility Retained Generation (URG) assets and QFs contracts whose energy payments are indexed to natural gas prices. SDG&E indicates that in addition to dispatchable capacity, one of its "significant residual net short needs" is for energy products to replace San Onofre Nuclear Generation Station (SONGS) Unit 3 during its scheduled refueling in early 2003.[15,16] Edison's testimony lists energy products without making a specific showing of need for them.

With the exception of ORA, parties do not dispute the utilities' identified need for capacity products. ORA characterizes Edison's proposal as an "unspecified need for capacity contracts" and argues that Edison's proposal fails to adequately define what it means by capacity.[17] Additionally, ORA

---

[14] Edison Brief, p. 10.

[15] SDG&E Brief, p. 12.

[16] SDG&E contemplates that it may opt not to exercise the procurement authority granted by this Decision. SDG&E states: "There should be an explicit recognition in the authorization for interim procurement that authorization creates no presumption that it is imprudent not to use this authority to its full extent." (P. 12.)

[17] Notwithstanding these reservations, ORA recommends that "the utilities be authorized to pursue an initial purchase of capacity." (ORA Brief, p. 5.)

recommends that the Commission should explicitly encourage energy for capacity transactions given that "the utilities generally appear to be long in energy supplies and short in electric capacity."[18] CEC points out that the utilities should be encouraged to foster the development and trade of energy products that satisfy RNS requirements during "super-peak" periods.

Given the flexibility that capacity products provide in meeting a range of variously shaped residual net short requirements during certain hours in a month, we agree with Edison's proposal that capacity contracts should be allowed under transitional procurement process.

Gas tolling agreements will be allowed as a subset of capacity contracts. Recognizing the scheduled refueling of SG&E's SONGS Unit 3 in 2003 and in consideration of CEC's recommendation for promoting peaking energy products, we are also authorizing the use of forward energy products under interim procurement process. Additionally, we find the it is reasonable for the utilities to arrange for the transportation of the physical commodity portion to be deliver pursuant to capacity and energy contracts. Related fuel products, natural gas supply, transportation, and storage are also authorized to the extent the utilities make a showing that such arrangements are in support of the specific electric capacity transactions brought forward pursuant to this decision.

Energy exchanges, such as the energy for capacity transaction recommended by ORA, peak for off-peak exchanges, and seasonal exchanges, are authorized for interim procurement. As noted by ORA, these types of

---

[18] *Id.* p. 6.

transactions have proven to be cost effective in the past plus the Commission and the utilities have significant previous experience with these types of transactions.

We do not provide additional authority to the utilities for the use of financially-settled hedging instruments for interim procurement, including natural gas hedges. Such transactions are likely to add a level of complexity to the interim procurement review process that could potentially overwhelm staff resources. Under this interim procurement framework, we are only authorizing physical transactions. Financial transactions will be addressed further in a future decision adopting utility procurement plans. The requests of PG&E and Edison for additional authority to transact for natural gas hedging as part of this short-term interim procurement mechanism is, therefore, denied. We also deny PG&E's specific request to procure gas hedging to hedge the fuel cost risks associated with its URG and QFs contracts. We reject PG&E's request for two reasons. First, the request goes beyond the scope of this proceeding. PG&E's gas hedging proposal is focused on hedging fuel costs associated with existing generation resources whereas this proceeding addresses the utilities' going-forward RNS procurement needs for 2003.[19]

We find that granting transitional authority, under the terms and conditions adopted here, is beneficial for both the utilities and their customers. Edison and PG&E will benefit by being able to enter procurement contracts prior to regaining an investment grade credit rating and to demonstrate to the financial markets that they can successfully resume their full procurement

---

[19] See Section 2.4 of the Settlement Agreement entered into by the Commission and Edison settling matters at issue in *Southern California Edison Company, Plaintiff, vs. Loretta M. Lynch, et al.*, October 21, 2001.

responsibilities under the Commission's regulatory oversight. All three utilities will benefit by reducing the amount of purchases they will need to make beginning in 2003 and beyond. Finally, customers of the utilities will benefit from the utilities receiving and exercising this authority in a manner that promotes reliable service at just and reasonable rates. We next discuss the process that should be used by the utilities to make this showing of ratepayer benefits.

The utility/DWR agreement proposed by Edison should be modified to meet the concerns expressed by DWR in its May 31st memo. The revised agreement should be submitted to the Commission by each respondent utility by a compliance filing within five days.

E. Procedural Process

1. What is Being Requested?

In their July 12th briefs, CU, PG&E, Edison, and TURN advocate that the Commission adopt their proposed expedited advice letter process. This process would have the Commission commit to approve or disapprove the contract and/or procurement process by Commission resolution within 30 days of filing. Approval would constitute a determination by the Commission that costs incurred by the utility under the contract itself and/or under contracts conforming to the procurement process are "reasonable" and "prudent" for purposes of recovery in retail rates under the Public Utilities Code for the full term of the contract or contracts. Utility administration of such contracts would remain subject to reasonableness review by the Commission under reasonableness criteria or incentive ratemaking, as appropriate. If the Commission rejects a proposed contract or procurement process, it would designate alternative procurement choices that would be recoverable by the utility for ratemaking purposes without further reasonableness review.

ORA is the only other party proposing an alternative procedural process. ORA discusses the complexity of the issues it expects to confront and, therefore, states that the Commission should authorize only one application for each utility, and there should be a minimum review period of 30 days before parties need to respond by filing a protest. It recommends the Commission process these contracts by advice letter and if there is a protest, the Commission would resolve the dispute by a resolution.

The advice letter procedure proposed by the parties to the Joint Principles has the Commission approving by resolution the utility's filing within 30 days. At a minimum, it generally takes approximately 60 days to adopt an advice letter by resolution.

2. What is Required Now?

We agree it is reasonable to implement a transitional approach to procurement, but we modify Edison's proposal slightly. The time periods in Edison's proposed process are ambitious, but public necessity requires the Commission to take extraordinary steps in order to provide sufficient time for the utilities to obtain DWR funding by the end of this year. The modifications that we make to the Edison proposal reflect the fact that Commission Meetings usually occur twice a month, and there can be as much as three weeks between Meetings. Thus, there are actually two competing timelines in Edison's proposal. The first timeline is forward counting as presented by Edison. The second timeline would count backward from when a Commission Meeting is scheduled. The agenda for the Commission Meeting is noticed at least ten days prior to the Meeting itself.

To reconcile these competing timelines, we have adopted a schedule that would allow Energy Division and the Assigned Commissioner a maximum of seven days to prepare and review, respectively, the draft Resolution if and only if a Commission Meeting is scheduled twenty-seven days from the advice letter filing date. If the Commission Meeting date is less than twenty-seven days from the advice letter filing date, then the draft Resolution would be noticed on the following Commission Meeting date. If the Commission Meeting date is more than twenty-seven days from the advice letter filing date, then the Energy Division and the assigned Commissioner would have more time to prepare and review the draft Resolution. We suspect the last schedule we described may be the more common occurrence. We urge Energy Division and the Assigned Commissioner, nevertheless, to expedite their efforts to prepare and review the draft Resolution in order to increase the time allowed for parties to comment. The deadline for circulating any draft Resolution for comment would be the date the agenda is mailed for the next Commission Meeting.

An abbreviated schedule for this Advice Letter process appears in Appendix B of this decision.

The pace at which we can proceed is initially within the utilities' control as it is governed by the contents of the filed advice letter.

If the utilities provide the Commission a complete and clearly laid-out advice letter that is uncontested and meets our standard for approval, the Commission could place a Resolution on a Commission agenda within approximately 30 days. The findings made in the first Resolution will provide guidance that should facilitate future filings. Moreover, the utilities can include multiple contracts in the same advice letter to further expedite the process.

The utilities have requested that the Commission pre-approve each contract. The utilities testified at some length that they were unwilling to accept any procurement risk. The record shows, however, that a cost premium may attach to a pre-approval process because the utilities may need to pay a fee to keep an offer open or pay a premium to "refresh" the offers after the Commission grants approval. If the utilities seek pre-approval, they should carefully monitor and report any cost premium paid for this.

The procedural process laid out above is an ambitious one for the Commission. Our past experience with trying to review and approve large contracts in an expedited manner has not always been entirely successful. However, we find there are policy reasons for adopting Edison's motion for transitional procurement authority, with modifications, and believe the process we adopt here is a workable process.

III. Qualifying Facilities

CCC proposes that the Commission once again require utilities to make Standard Offer 1 contracts (SO1) available to QFs with a design capacity greater than 100 kilowatts (kW). CCC additionally asserts that QFs are entitled to a "right of first refusal" (ROFR) with respect to all energy and/or capacity contracts that investor-owned utilities (IOUs) might enter into with non-QF suppliers.

A. The Statutory and Regulatory Framework Governing PURPA

1. Federal Law

The Public Utility Regulatory Policy Act of 1978 (PURPA), as codified in the United States Codes (USC) at 16 U.S.C. § 824a-3, requires the Federal Energy Regulatory Commission (FERC) to prescribe and periodically revise rules that "require electric utilities to offer to . . . (2) purchase electric energy from [QFs]."[20] Rates paid by utilities for purchases of electric energy may not exceed "the incremental cost to the electric utility of alternative electric energy."[21] PURPA defines incremental cost with respect to electric energy purchased from a QF as "the cost to the electric utility of the electric energy which, but for the purchases from such [QF] such utility would generate or purchase from another source."[22]

---

[20] 16 U.S.C. § 824a-3(a)

[21] 16 U.S.C. § 824a-3(b)

[22] 16 U.S.C. § 824a-3(d). PURPA also requires that the cost to the utility be "just and reasonable" to electric consumers while not discriminating against QFs. (*Id*. § 824a-3(b)(1) and (2).)

The FERC has complied with its PURPA obligation to "prescribe rules" by promulgating in the Code of Federal Regulations (CFR) 18 CFR § 292 et seq. The rules set forth therein provide in pertinent part that: "each electric utility shall purchase, in accordance with [18 CFR] § 292.304, any energy and capacity which is made available from a [QF]. . . "[23] §292.304, entitled "rates for purchases," establishes a pricing regime for purchases by IOUs from QFs. Consistent with 18 U.S.C. § 824a-3, § 292.304(a)(1) requires first that "rates for purchases shall: (i) [b]e just and reasonable to the electric consumer of the electric utility and in the public interest. . ."[24] While rates may not exceed avoided costs,[25] rates will satisfy the "just and reasonable" and non-discrimination requirements of § 292.304(a) "if the rate equals the avoided costs determined after consideration of the factors set forth in paragraph (e) of this section."[26] Paragraph (e) provides a laundry list of factors to be taken into account in determining avoided costs, "to the extent practicable." These are elaborated upon below.

The FERC's rules require that standard rates for purchases be put into effect only "for purchases from qualifying facilities with a design capacity of

---

[23] 18 CFR § 292.303(a).

[24] 18 CFR § 292.304(a)(1).

[25] 18 CFR § 392.304(a)(2).

[26] 18 CFR § 392.304(b)(2).

100 kilowatts or less."[27] Whether to implement standard rates for qualifying facilities "with a design capacity of more than 100 kilowatts" is discretionary.[28]

Purchases from "as-available" QFs are subject to special pricing rules. QFs may provide energy as it is available, "in which case the rates for such purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery."[29] QFs providing electric energy or capacity under a contract are to be paid either avoided costs at the time of delivery, or avoided costs calculated at the time the QF entered the contract, whichever the QF chooses at the time it enters the contract.[30]

2. State Law

PURPA also imposed an obligation on this Commission. "[E]ach State regulatory authority shall . . . implement [the FERC QF rules] for each electric utility for which it has ratemaking authority."[31] It falls to this Commission to implement the pricing provisions just elaborated. This Commission has a lengthy history of setting QF prices, which we need not elaborate here. For present purposes, it is sufficient to pick up the story with the Commission's D.96-10-036, which significantly revamped our handling of QF pricing, and which is central to any analysis of CCC's proposals. We will touch on the particulars of D.96-10-036 as it applies to CCC's proposals in more detail

[27] 18 CFR § 392.304(c).

[28] 18 CFR § 392.304(c)(2).

[29] 18 CFR § 392.304(d)(1)

[30] 18 CFR § 392.304(d)(2).

[31] 18 U.S.C. § 824a-3(f)(1).

below, but will briefly summarize the decision here. In D.96-10-036, the Commission undertook to bring its QF implementation practices into the restructured world. Of particular significance to the issues in this docket, the Commission terminated as of January 1, 1998 any requirement that utilities enter SO1 or SO3 contracts with QFs. "QFs with design capacity 100 kW or less may negotiate non-standard agreements based upon the standard rates applicable to grand fathered USO1's and tariff Rule 21."[32]

The Commission further provided that "utilities shall not recover in rates any portion of payments to as-available QFs holding non-standard agreements entered into after December 20, 1995, that, at the time of delivery, are greater than market prices."[33] The Commission explicitly migrated QFs towards full and equal participation in markets alongside other sources of generation, stating:

> We therefore place QFs, with two limited exceptions, on notice that they cannot rely upon obtaining regulatory must-take status if the date of formation of their agreement with PG&E, Edison, or SDG&E is after December 20, 1995. No modification of our Restructuring Decision is involved: the plain meaning of "grand fathered" is consistent with this result. New QFs will be, as soon as the restructured market begins operation, "subject to the same protocols and prices regarding transmission access and treatment of transmission congestion." They will clear the power exchange if they

[32] D.96-10-036, Ordering Paragraph 7.0

[33] An exception to this rule was carved out for "small publicly owned biomass" facilities. (D.96-10-036, Ordering Paragraph 8.)

> bid low enough relative to all other sources to clear the market.[34]

For "grandfathered" QFs, i.e., those with contracts entered prior to December 20, 1995, pricing would continue to be based on the contract terms, which almost universally set price at "short run avoided cost." (SRAC.) With respect to SRAC, the legislature took a hand when it enacted Public Utilities Code Section 390 as part of AB 1890. Generally speaking, Public Utilities Code Section 390 sets out components (most significantly, gas costs) to use in setting SRAC, pending a shift to the use of PX prices to establish SRAC. The Commission implemented R.99-11-022 to work out the particulars of SRAC pricing under Public Utilities Code Section 390. Events overtook this rulemaking, and the demise of the PX in January 2001 ended any chance of a universal migration of QFs to PX-based SRAC pricing. At present, SRAC is set using a formula based on gas prices.[35] Each utility has detailed QF pricing information (current and historical) on its respective website.[36]

B. Treatment of QFs During the Transition Procurement Period

As a general proposition, we find that QF power provides significant benefits to the state, in the form of more efficient industrial processes, as well as

[34] D.96-10-036 (citations and footnotes omitted).

[35] See D.01-03-067, as modified by D.02-02-028.

[36] http://www.pge.com/002_biz_svc/002e1_info_center.shtml

http://www.sce.com/sc3/005_regul_info/005i_qualifying_facilities/QFDataDoc.htm

http://www2.sdge.com/srac/

electric power. QFs have continued to provide power to the state during difficult circumstances during the past several years. A consequence of not making provisions for continuing QF contracts would be more QF power going off-line, creating additional net short that the utilities would need to procure during the interim period.

Therefore, we make the following requirements of the IOUs to purchase QF power during the interim procurement period. For any QF meeting three conditions, the utilities are required to offer SO1 contracts. These conditions are:

- The QF must have been in operation and under contract to provide power with an IOU at any point between January 1, 1998 and the effective date of this decision
- The QF contract must be set to expire before January 1, 2004 or have already expired
- The QF must be able to provide power that serves to reduce the residual net short for the IOU.

Provided that these conditions are met, utilities should enter into SO1 contracts with a term to extend until execution of the IOUs' long-term procurement plans. In other words, assuming that a provision is made for QFs to compete in whatever long-term procurement framework the Commission adopts, the QFs contracts we require today would extend until announcement of the winning bids under an IOU long-term procurement plan (if the QF offers a losing bid) or until a new contract is put into place under the long-term procurement plan (if the QF offers a winning bid). These requirements should maintain maximum flexibility for long-term procurement while not jeopardizing existing resources in the short-term.

The pricing terms for the SO1 contracts should be consistent with existing Commission SRAC policy established in D.01-03-067, as modified by D.02-02-028.

Establishing these rules obviates the need for granting QFs a right of first refusal under the interim procurement process, since all QFs capable of providing any power that reduces the utilities' net short requirements will automatically have an opportunity to participate.

IV. Procurement of Renewables During the Transitional Period

A. Renewable Procurement Set-Aside

There is a real concern, expressed by many parties, that an interim contracting authorization might result in the foreclosure of all opportunities for the procurement of renewable resources this year, in 2003, and perhaps beyond. Such a result would clearly countermand the will of the legislature and the mandate of this Commission, as expressed in Public Utilities Code Section 701.3, and in AB57. In particular, PU Code Section 701.3 states, in relevant part:

> "The Commission shall direct that a specific portion of future generating capacity needed for California be reserved or set aside for renewable resources."

AB57 states, in relevant part:

> " The electrical corporation will, in order to fulfill its unmet resource needs and in furtherance of Section 701.3, until a 20 percent renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1 percent per year of the electricity sold by the electrical corporation is generated from renewable energy resources…"

Though AB57 is not yet law, we see no reason to delay movement towards this renewable resource goal. Thus, during the transitional period, we require that each IOU hold a separate competitive solicitation for renewable resources in the amount of at least 1 percent of their annual energy and capacity needs beginning January 1, 2003. The contract terms for renewable resources should be for a minimum of five years. During the solicitation process, utilities should give a preference to existing renewable resources in the bidding process. We intend to make more provisions for new renewable resources in the long-term procurement process.

The requirement for a 1 percent increase in renewable resources is irrespective of the residual net short, though utilities may make every effort to tailor their solicitations to meet their net short requirements.

Creating this set-aside in the transitional procurement process for renewable resources should obviate the need to require automatic extensions of renewable contracts currently held by DWR, as requested by Ridgewood Olinda LLC in its June 12 motion. Thus, we deny this motion, but encourage Ridgewood, and any other renewable operators holding existing or recently expired DWR or utility contracts to participate in the solicitation process described above.

B. The Role of Public Goods Charge Funds in Renewable Procurement

We anticipate that a number of the respondents to the solicitations hereby ordered will be recipients of PGC funds awarded by the CEC. These are funds that have been paid by utility customers over the past four years, with the intent that they cover the “above market costs” of renewable power in a competitive market. With the dissolution of the Power Exchange this competitive market benchmark is no longer available to us.

Nonetheless we are preliminarily directed by AB 57 to ensure that "above market costs" of renewable power are covered by the PGC, and as a policy principle we seek to render any such subsidies as transparent as possible, without stymieing entirely the process of new renewable procurement. The explicit information on PGC funding we seek to collect will allow us to evaluate the importance of this subsidy in California's renewable industry, and will aid us in developing, should the record compel us to do so, benchmark prices for renewable technologies.

The question of establishing appropriate market prices, above which subsidies from the PGC will be required, is a task for the next phase of this proceeding. The success of such an effort in the next phase, however, is largely dependent on legislative authorization of the CEC's financial plan for the future of the Renewable Energy Program. These funds represent the primary means of support for renewable generation; without them, the requirement in AB 57 that above-market costs of renewable generation be covered via the PGC represents an unfunded mandate. We anticipate that the legislature will have finalized the financial reauthorization of the PGC program when we turn to the full Procurement Plans in the next phase.

V. Shortening the Public Review Period of the Proposed Decision

In setting the briefing schedule on July 2, 2002, the ALJ asked parties to address if they would stipulate to shortening the time for review of the proposed decision pursuant to Section 311(g)(2). Several parties stated their support for this in their briefs; no party opposed the request. Parties will have another opportunity to address this issue in their oral argument before the Commission on August 8, 2002. We will consider the silence of a party on the issue to imply consent. If no objections are raised to the Commission shortening time for public review of the proposed decision at the oral argument, comments will be due on August 19, 2002 and the decision will be placed on the August 22, 2002 Commission agenda.

Comments on Draft Alternate Proposed Decision

The draft alternate proposed decision of Commissioner Peevey in this matter was mailed to the parties in accordance with Rule 77.6 of the Commission's Rules of Practice and Procedure. Comments were filed on ______.

Findings of Fact

1. PG&E, SDG&E, and Edison are the respondent utilities in this proceeding.

2. On May 6, 2002, Edison filed a "Motion for an Interim Decision Granting Approval of Process for Early Procurement of Capacity." Edison's motion requests authority to enter into multi-year capacity contracts for a term of up to five years using the credit of the DWR until Edison regains its investment grade rating.

3. On May 15, 2002, the assigned Commissioner and ALJ issued a ruling finding that the authority sought by Edison should be considered in the hearings scheduled to commence shortly, and modified the hearing schedule to accommodate this.

4. At the hearings, held from June 10 through July 3, 2002, PG&E and SDG&E requested that they be granted the same transitional period authority as Edison is granted. In addition, PG&E requests it be granted authority to enter gas hedge contracts of the type currently authorized Edison under its Settlement Agreement with the Commission.

5. Interested parties to the proceeding generally support a more limited transitional authority that that requested by the respondent utilities; Ridgewood and Aglet recommend the request be denied.

6. SDG&E currently has an investment grade credit rating, and, therefore, a question exists as to whether the credit support of DWR should be provided, and if so, when SDG&E should assume financial and legal responsibility for the contracts from DWR. We find that SDG&E is creditworthy, its procurement needs are a small part of the market, and it can fully participate in the CAISO market. SDG&E may execute any contracts resulting from the authority granted today without DWR involvement. SDG&E may use the expedited review process

7. We will consider Edison's May 6th motion in a manner that will not harm renewable generation in the final procurement plan.

8. We will be conservative in any authority we grant until a decision on allocation of the existing DWR contracts is final, both at the Commission and in any reviewing courts.

9. We should adjust PG&E's proposed capacity limit to reflect a comparable methodology to Edison's and PG&E's conservative low RNS forecasts.

10. We find merit in authorizing multi-year procurement. The prospect of signing multi-year procurement contracts will help attract suppliers to utility solicitations and will help attract capital investment in new generating projects.

11. It is reasonable to grant Edison, PG&E and SDG&E authority to procure of its on-peak hourly RNS requirement reflected in a low-case RNS scenario for products.

12. Unnecessary restrictions that we impose on the utilities may hinder them now in their efforts to avoid high spot market prices during critical periods, we find it reasonable to deny SDG&E's recommended 50/50 proposal.

13. It is reasonable to grant Edison and PG&E authority to purchase:

(a) capacity contracts;

(b) forward energy products;

(c) transportation of the physical commodity portion to be delivered pursuant to authorized capacity and energy contracts;

(d) related fuel products, natural gas supply, transportation, and storage for specific authorized capacity or energy contracts;

(e) energy exchanges, such as energy for capacity transactions, peak for off-peak exchanges, and seasonal exchanges.

14. It is unreasonable to grant the respondent utilities authority to use financially-settled hedging instruments because of the complexity in reviewing these transactions in an expedited manner.

15. We adopt PG&E's request for additional authority to procure gas hedging to hedge the fuel cost risks associated with its retained generation and qualifying facilities contracts because it is consistent with authorization previously adopted for Edison.

16. We find that granting transitional authority, under the terms and conditions adopted here, is beneficial for both the utilities and their customers. Edison and PG&E will benefit by being able to enter procurement contracts prior to regaining an investment grade credit rating and to demonstrate to the financial markets that they can successfully resume their full procurement responsibilities under the Commission's regulatory oversight. Customers of the

utilities will benefit from the utilities receiving and exercising this authority in a manner that promotes reliable service at just and reasonable rates.

17. The Edison / DWR agreement proposed in Edison's May 6th Motion should be modified to meet the concerns expressed by DWR in its May 31st memo.

18. Edison, PG&E, and SDG&E have in their initial control how expedited the review and approval process will be based on the transitional procurement strategy they employ, the early and collaborative role they give staff and non-market participant parties in reviewing their analysis and recommendations, the contracts they chose to enter, the quality of the advice letter package they file, and their responsiveness to requests for additional information.

19. All products purchased under this authority should be purchased using a competitive process.

20. We expect utilities to take into consideration in their resource selection the mandates of Section 701.3 and AB 57.

21. The respondent utilities should set aside at least 1 percent of their annual energy and peak demand needs to be procured from renewable resources as part of the transition procurement process.

22. We should not re-institute the utility obligation to enter SO1 contracts for qualifying facilities, as defined under the Public Utility Regulatory Policy Act of 1978 during this transition period until the full implementation of the utilities' long-term procurement plans, for all QF2 that meet the following criteria:

- The QF must have been in operation and under contract to provide power with an IOU at any point between January 1, 1998 and the effective date of this decision

- The QF contract must be set to expire before January 1, 2004 or have already expired
- The QF must be able to provide power that serves to reduce the residual net short for the IOU.

23. It is not necessary to grant a right of first refusal to QFs.

24. Existing facilities, with or without contracts, are free to sell excess energy into the ISO spot markets. As we lay the groundwork for the Procurement Plan solicitations in the coming months, we encourage existing facilities to take advantage of this potential market for their output.

Conclusions of Law

1. We need to develop a process that is balanced: one that meets the needs of the utilities for timely decisions that reduce regulatory uncertainties while at the same time ensuring that the Commission has exercised its statutory responsibilities to protect consumers from unreasonable costs through effective oversight and regulation.

2. The utilities should use a competitive process that provides wide dissemination of the request to members of the generation community, to include renewable resource suppliers. The specifications for a capacity or energy contract should not be fuel or technology specific, with the exception of a renewable set-aside and the treatment of QFs.

3. We are obligated to reinstitute SO1 contracts for QFs during the transition period.

4. It is not necessary to provide a first right of refusal to qualifying facilities for solicitations conducted under the transitional authority granted here.

5. In order to ensure an adequate review period, the utilities should use an advice letter process for nonstandard contract review and approval, especially as

we undertake to quickly examine and provide, up-front reasonableness approval to electric procurement contracts that are represented to be quite complex multi-year transactions.

6. This order should be effective today in order to allow the utilities to expeditiously begin the all-source solicitation process, described herein.

INTERIM ORDER

IT IS ORDERED that:

1. The May 6th, 2002 motion of Southern California Edison is granted, with the modifications set forth in this decision.

2. The respondent utilities shall file by compliance letter the terms under which they will enter contracts in participation with the California Department of Water Resources (DWR), revised to address the concerns stated by DWR in its May 31, 2002 memo, within five days of the effective date of this order.

3. We adopt the process to approve contracts for transitional procurement as contained in Appendix B.

4. Any contract under which a respondent utility is seeking pre-approval must be filed by application within 30 days of signing or selection. The utilities shall carefully monitor and report any cost premiums paid for pre-approval.

5. IOUs are required, during the transition procurement process, to procure at least 1 percent of their annual energy and capacity needs through a set-aside competitive procurement process for renewable resources. Renewable contracts must have a minimum term of five years.

6. IOUs are required to offer SO1 contracts, whose term ends at the time that the IOU fully implements its long-term procurement plan approved by the Commission, to any QF meeting the following conditions:

- The QF must have been in operation and under contract to provide power with an IOU at any point between January 1, 1998 and the effective date of this decision

- The QF contract must be set to expire before January 1, 2004 or have already expired
- The QF must be able to provide power that serves to reduce the residual net short for the IOU.

7. The June 12, 2002 motion of Ridgewood Olinda, LLC is denied.

This order is effective today.

Dated ____________________________, at San Francisco, California.

APPENDIX A

is in 128988

APPENDIX B

Procurement Contract Review Process

	Adopted Review Process	
Day	Days to Complete Task	Tasks
-15	15	Review Group to assess proposed contracts and provide written comments to IOU before IOU submits contract(s) to PUC.
0	0	Advice Letter Filed by IOU including proposed contract(s), procurement processes, and Review Group recommendations
7	7	Protests due within seven days of AL filing.
10	3	Replies to protests due within three days of protest.
20	7	Maximum amount of time for Energy Division to prepare a Resolution and the assigned Commissioner to review it in order to meet the minimum 10 day requirement for notice on item on the Commission's agenda Draft Resolution circulated to parties for a shortened comment period due to public necessity.
27	10+	PUC rules on Advice Letter. Approval constitutes a determination that cost incurred under contracts and/or contracts conforming to procurement process are reasonable and prudent. If PUC rejects proposed contract or procurement process, it would designate alternatives that would not be subject to further reasonableness review. Approval would constitute determination that cost incurred under the contracts itself and/or under contracts conforming to procurement process are reasonable and prudent.· IOU administration of contracts would remain subject to reasonableness review by the CPUC under reasonableness criteria or incentive ratemaking, as appropriate. If, in order to meet the minimum 10 day notice requirement for the Commission's agenda, Energy Division and the Assigned Commissioner do not have 7 days to prepare and review the Resolution, it should be put over until the next regularly scheduled Commission Meeting.
31-59		

(END OF APPENDIX B)

APPENDIX C

ADOPTED MASTER DATA REQUEST

- Identification of the ultimate decision maker(s) up to the Board level, approving the contract.
- The briefing package provided to the ultimate decision maker.
- A summary of any issues and questions raised by the decision maker.
- The process used to obtain capacity contract offers.
- The quantitative process used to rank offers.
- Relative cost-effectiveness of the offer.
- The contract.
- The break-even spot price equivalent to the contract.
- A copy of the software used by the utility to analyze the contract.
- An electronic copy of any data or forecasts used by the utility to analyze the contract.

(END OF APPENDIX C)